

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Boone County School District)	File No. SLD-220067
Madison, West Virginia)	(FRNs 543275 and 590131)
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 7, 2002

Released: November 8, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division is a Request for Review filed by Boone County School District (Boone County), Madison, West Virginia.¹ Boone County seeks review of funding commitment decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company in regards to the above-captioned requests for support in Funding Year 2001 of the schools and libraries universal service program.² For the reasons set forth below, we deny Boone County's Request for Review in part and remand the remainder for SLD to decide in the first instance.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³

¹ Letter from Nathaniel Hawthorne, Esq., on behalf of Boone County School District, to Federal Communications Commission, filed September 4, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). Previously, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus, the funding period which began on July 1, 2001 and ended on June 30, 2002, previously referred to as Funding Year 4, is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003, is now known as Funding Year 2002, and so on.

³ 47 C.F.R. §§ 54.502, 54.503.

The Commission's rules require that the applicant make a bona fide request for services by filing with the Administrator an FCC Form 470, which is posted to the Administrator's website for all potential competing service providers to review.⁴ After the FCC Form 470 is posted, the applicant must wait at least 28 days before entering an agreement for services. Prior to entering into an agreement with a service provider, the Commission's rules require that the applicant carefully consider all bids submitted for provision of the requested services.⁵ The Commission has held that price should be the primary factor in selecting a bid, but has noted several additional factors that also should be considered by the applicant in determining which service provider meets their needs "most effectively and efficiently."⁶ After entering into service agreements, the applicant must submit an FCC Form 471, which requests support for eligible services.⁷ SLD reviews the FCC Forms 471 that it receives and issues funding commitment decisions in accordance with the Commission's rules.

3. Boone County appeals decisions on Funding Request Numbers (FRNs) 543275 and 590131.⁸ FRN 543275 seeks discounts on local telecommunications service, in the amount of \$4,500 a month, but, in its award, SLD adjusted this monthly amount to \$412.37 to reflect the documentation provided by Boone County with its FCC Form 471.⁹ Boone County appeals, pointing to bills submitted during application review that are asserted to support a monthly rate of \$4,858.96.¹⁰ FRN 590131 seeks discounts on internal connections, specifically the cost for

⁴ Schools and Libraries Universal Service, Description of Services Requested and Certification Form, OMB 3060-0806 (September 1999) (FCC Form 470); 47 C.F.R. § 54.504(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078, para. 575 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service First Report and Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁵ 47 C.F.R. § 54.511(a).

⁶ *Universal Service Order*, at 9029, para. 481. Additional factors that an applicant should consider—when permitted by state and local procurement rules—include “prior experience, including past performance; personnel qualifications, including technical excellence; management capability, including schedule compliance; and environmental objectives.” *Id.*; see also *Request for Review by the Department of Education of the State of Tennessee of the Decision of the Universal Service Administrator*, *Request for Review by Integrated Systems and Internet Solutions, Inc. of the Decision of the Universal Service Administrator*, *Request for Review by Education Networks of America of the Decision of the Universal Service Administrator*, CC Docket Nos. 96-45 and 97-21, Order, 14 FCC Rcd 13734, 13739, para. 10 (1999).

⁷ 47 C.F.R. § 54.504(b), (c); Schools and Libraries Universal Service, Services Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁸ Request for Review.

⁹ FCC Form 471, Boone County School District, filed January 16, 2001 (Boone Form 471); Request for Review, Attachment A; Letter from Schools and Libraries Division, Universal Service Administrative Company, to Paul Karas, Boone County School District, dated August 7, 2001 (Funding Commitment Decision Letter), at 7.

¹⁰ Request for Review, Attachment F.

installation and maintenance of Internet access equipment.¹¹ SLD denied this request on the grounds that the applicant had “not provided sufficient documentation to determine the eligibility of this item.”¹² Boone County argues that it supplied all the supporting documentation requested by SLD during application review, including a copy of the month-to-month proposal.¹³

4. Boone County appealed these funding decisions directly to the Commission.¹⁴ As to FRN 590131, seeking costs for installation and maintenance of equipment to be used in its Internet access service, Boone County argues that, on July 17, 2001, it provided all the supporting documentation requested by SLD.¹⁵

5. We have reviewed Boone County’s appeal and conclude that Boone County has not shown that FRN 590131 was improperly denied. Given the enormous volume of applications and other submissions that SLD processes and reviews each year, it is necessary for SLD to put in place measures to ensure prompt resolution of applications. One such measure in place is an administrative policy that applicants from whom SLD solicits additional information necessary to complete their application respond with that information within seven days of being contacted.¹⁶ The policy has been necessary in order to prevent applicants from unduly delaying the application process. Here, SLD requested a quote for one-time and monthly charges and a breakdown of services on June 25, 2001.¹⁷ Boone County concededly did not respond until July 17, 2001. Under SLD’s seven-day policy, it properly did not consider the late information, and therefore correctly denied FRN 590131.

6. As to FRN 543275, we find that the appeal of this FRN should be addressed by SLD in the first instance. While Commission rules provide that applicants may appeal a decision of SLD directly to the Commission without first appealing to the Administrator, the rules do not preclude the possibility that the appropriate action on a direct appeal to the Commission is to

¹¹ Request for Review at 2; Boone Form 471.

¹² Funding Commitment Decision Letter at 8.

¹³ Request for Review at 2.

¹⁴ Request for Review. In its Request for Review, Boone County also appealed SLD’s denial of its funding request for Internet access services to be provided by the Regional Education Service Agency of West Virginia (RESA), FRN 590208. *See* Request for Review. On January 11, 2002, however, Boone County filed a request to withdraw its appeal concerning the RESA Internet access services. *See* Letter from Nathaniel Hawthorne, on behalf of Boone County School District, to Federal Communications Commission, filed January 11, 2002. This Order only addresses those funding requests that were not specifically withdrawn by Boone County.

¹⁵ Request for Review at 2.

¹⁶ *See Request for Review by Nefesh Academy, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-27881, CC Dockets No. 96-45 and 97-21, Order, DA 99-2284 (Com. Car. Bur. rel. October 22, 1999) (citing seven-day rule). *See also* SLD Website, Reference Area, “Program Integrity Assurance (PIA),” <http://www.universalservice.org/reference/6pia.asp>.

¹⁷ *See* Universal Service Administrative Company, Schools and Libraries Division, Review Activity Log, June 25, 2001 (Review Activity Log).

remand the appeal to SLD.¹⁸ We find that such a remand is appropriate in this case. The record before us does not reveal the facts and reasoning on which SLD's determination is based with clarity, *e.g.*, whether it disregarded the new monthly bill information, or found that it did not support the request.¹⁹ A remand of the appeal will provide SLD a chance to elaborate on its reasoning and to review and address the argument made by applicant. This in turn will aid both the applicant and the Commission should Boone County find it necessary, following SLD's decision on its appeal, to seek further review from the Commission. We emphasize that, in remanding the appeal of FRN 543275 for SLD's review and adjudication, we make no conclusions as to its merits.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed by Boone County School District, Madison, County IS DENIED as to FRN 590131 and REMANDED as to FRN 543275 for SLD to resolve in the first instance.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

¹⁸ 47 C.F.R. § 54.719.

¹⁹ We note that the record before us reflects a documentation request made by SLD during application review for support of the one-time charge requested, but not a request for support of the monthly charge. *See* Review Activity Log, June 25, 2001.